IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

...

Criminal Appeal No.376-SB of 1996

Decided on : November 28, 2007

Naresh Kumar

...Petitioner

versus

The State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE A.N.JINDAL

Present : Mr.Saurabh Dalal, Advocate for
the appellant.

Mr.K.S.Godara, Deputy Advocate General
Haryana.

A.N.JINDAL, J. -

Assailed in this appeal is the judgment dated 17.4.1996, passed by Additional Sessions Judge, Rohtak, convicting Naresh Kumar – accused/appellant (hereinafter referred to as the appellant) under Section 376 read with Section 511 of the Indian Penal Code and sentencing him to undergo imprisonment for five years and to pay fine of Rs.1000/- and in default of payment of fine, to further undergo imprisonment for two months.

In nutshell, the allegations are that on 25.8.1995 at about 3.00

p.m, when the prosecutrix (name not being disclosed), aged about 8 years, had gone to ease herself, she was picked up by the appellant and taken to nearby field, where `harar' crop was standing. He tried to commit rape with her, but the screams raised by her attracted her mother Pushpa Devi (PW4) at the spot. Consequently, the appellant fled away. On the statement of the prosecutrix Ex.PC, the First Information Report Ex.PC/1 was recorded; statements of the witnesses were recorded, site plan Ex.PG was prepared and the appellant was arrested on 26.8.1995. On the same day, the prosecutrix and the appellant were got medico legally examined from Civil Hospital, Bahadurgarh. The clothes and vaginal swabs of the prosecutrix as also the undergarments of the appellant were taken into possession by the police vide memos Ex.PH and PJ, respectively.

The completion of the investigation was followed by the presentation of the report under Section 173 of the Code of Criminal Procedure. The appellant was accordingly charge-sheeted, to which he pleaded not guilty and claimed trial.

During trial, the prosecution examined Dr.Manju Lata Chaudhary (PW1), Dr.K.L.Kathuria (PW2), Nilam (PW3), Pushpa Devi (PW4), Ramesh Kumar (PW5), Tuhi Ram (PW6), Rajinder Singh Constable (PW7) and ASI Balwant Singh (PW8).

The appellant denied all the incriminating circumstances appearing against him during his statement under Section 313 of the Code

of Criminal Procedure and pleaded his false implication in the case. Ultimately, the trial ended in conviction. Hence, this appeal.

At the very outset without assailing the judgment of conviction, Mr.Saurabh Dalal, the learned counsel appearing for the appellant has sought indulgence of this court in the quantum of sentence keeping in view the longevity of the proceedings.

The case is the result of immaturity of the appellant. No rape has been committed, but it was only an attempt; the prosecutrix might have settled in life by now; sword of domacles remained hanging over his head during the pendency of the trial and also the appeal, which has been pending since 1996. Though, the longevity of the trial and pendency of the present appeal, may not be a cause to exonerate the appellant for such a heinous crime, yet it could be taken as a mitigating circumstance for reduction of the sentence. Therefore, ends of justice would be served if sentence is reduced to ½ of the actual sentence awarded by the Trial Court.

Consequently, the appeal is dismissed with the modification that the sentence of imprisonment is reduced to 2½ years, without alteration in the fine.

(A.N.JINDAL)
JUDGE

The 28th day of November, 2007
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To be referred to Reporter : Yes / No